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AUTHORITY: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989, 1986 Comp., p. 235); 15 U.S.C. 634(b)(6).

SOURCE: 72 FR 39728, July 20, 2007, unless otherwise noted.

### **§ 2700.10 What does this part do?**

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the SBA policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for SBA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (31 U.S.C. 6101 note).

### **§ 2700.20 Does this part apply to me?**

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in an SBA suspension or debarment action;

(c) SBA debarment or suspension official; or

(d) SBA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### **§ 2700.30 What policies and procedures must I follow?**

The SBA policies and procedures you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 of this part (i.e., § 2700.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that

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has no corresponding section in this part, SBA policies and procedures are those in the OMB guidance.

### Subpart A—General

#### § 2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Office of Credit Risk Management may grant an exception permitting an excluded person to participate in a particular covered transaction under SBA's financial assistance programs. For all other Agency programs, the Associate General Counsel for Procurement Law may grant such an exception.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

### Subpart B—Covered Transactions

#### § 2700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.22(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the SBA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the SBA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.200(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180)

### Subpart C—Responsibilities of Participants Regarding Transactions

#### § 2700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier trans-

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actions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this part.

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

#### § 2700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

### Subparts E–F [Reserved]

### Subpart G—Suspension

#### § 2700.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under § 180.755 to continue your suspension after you present information in opposition to that suspension under § 180.720, you may ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request that the SBA Office of Hearings and Appeals (OHA) review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under § 180.755 or paragraph (a)(1) of this section. However, OHA may reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the suspending official's decision without requesting reconsideration, or you may appeal the decision

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of the suspending official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

### Subpart H—Debarment

#### § 2700.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 180.870 to debar you after you present information in opposition to a proposed debarment under § 180.815, you may ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request that the SBA Office of Hearings and Appeals (OHA) review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, OHA may reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

### Subpart I—Definitions

#### § 2700.930 Debarring official (SBA supplement to government-wide definition at 2 CFR 180.930).

For SBA, the debarring official for financial assistance programs is the Director of the Office of Credit Risk Management; for all other programs, the debarring official is the Associate General Counsel for Procurement Law.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

#### § 2700.995 Principal (SBA supplement to government-wide definition at 2 CFR 180.995).

*Principal* means—

(a) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, CDC, SBIC, Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under the section 7(a) Loan, CDC, SBIC, SBDC, and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

(b) [Reserved]

#### § 2700.1010 Suspending official (SBA supplement to government-wide definition at 2 CFR 180.1010).

For SBA, the suspending official for financial assistance programs is the Director of the Office of Credit Risk Management; for all other programs, the suspending official is the Associate General Counsel for Procurement Law.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

**Subpart J [Reserved]****PART 2701—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS****Sec.**

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AUTHORITY: 15 U.S.C. 634(b)(6), 2 CFR part 200.

SOURCE: 79 FR 76080, Dec. 19, 2014, unless otherwise noted.

**§ 2701.1 Adoption of 2 CFR Part 200.**

(a) Under the authority listed above, the U.S. Small Business Administration adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.74, 200.92, and 200.93. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Administration.

**§ 2701.74 Pass-through entity.**

SBA will only make awards to pass-through entities where expressly authorized by statute.

**§ 2701.92 Subaward.**

SBA will only permit pass-through entities to make awards to subrecipients where expressly authorized by statute.

**§ 2701.93 Subrecipient.**

SBA will only permit non-Federal entities to receive subawards where expressly authorized by statute.

**§ 2701.112 Conflict of Interest.**

The following conflict of interest policies apply to all SBA awards of financial assistance:

(a) Where an employee or contractor of a non-Federal entity providing assistance under an SBA award also provides services in exchange for pay in

her or his private capacity, that employee or contractor may not accept as a client for her or his private services any individual or firm she or he assists under an SBA award.

(b) No non-Federal entity providing assistance under an SBA award (nor any subrecipient, employee, or contractor of such an entity) may give preferential treatment to any client referred to it by an organization with which it has a financial, business, or other relationship.

(c) Except where otherwise provided for by law, no non-Federal entity may seek or accept an equity stake in any firm it assists under the auspices of an SBA award. Additionally, no principal, officer, employee, or contractor of such an entity (nor any of their Close or Secondary Relatives as those terms are defined by 13 CFR 108.50) may seek or accept an equity stake or paid position in any firm the entity assists under an SBA award.

**§ 2701.414 Indirect (F&A) Costs.**

(a) When determining whether a deviation from a negotiated indirect cost rate is justified, SBA will consider the following factors:

(1) The degree to which a non-Federal entity has been able to defray its overhead expenses via those indirect costs it has recovered under other, concurrent SBA awards;

(2) The amount of funding that must be devoted to conducting program activities in order for a project to result in meaningful outcomes; and

(3) The amount of project funds that will remain available for conducting program activities after a negotiated rate is applied.

(b) After conducting the analysis required in paragraph (a) above, the head of each SBA grant program office will determine in writing whether there is sufficient justification to deviate from a negotiated indirect cost rate.

(c) Where SBA determines that deviation from a negotiated rate is justified, it will provide a copy of that determination to OMB and will inform potential applicants of the deviation in the corresponding funding announcement.